



POLICE DEPARTMENT

-----X
In the Matter of the Disciplinary Proceedings :

- against - :

FINAL

Police Officer Yaser Shohatee :

ORDER

Tax Registry No. 937533 :

OF

Housing PSA 7 :

DISMISSAL
-----X

Police Officer Yaser Shohatee, Tax Registry No. 937533, having been served with written notice, has been tried on written Charges and Specifications numbered 2017-17989, as set forth on form P.D. 468-121, dated November 8, 2017 (last amended on December 7, 2018), and after a review of the entire record, Respondent is found Guilty.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Yaser Shohatee from the Police Service of the City of New York.

DERMOT F. SHEA
POLICE COMMISSIONER

Effective: 3/25/2021



POLICE DEPARTMENT

-----X
In the Matter of the Disciplinary Proceedings :

- against - :

FINAL

Police Officer Sanad Musallam :

ORDER

Tax Registry No. 947817 :

OF

28th Precinct :

DISMISSAL
-----X

Police Officer Sanad Musallam, Tax Registry No. 947817, having been served with written notice, has been tried on written Charges and Specifications numbered 2017-18368, as set forth on form P.D. 468-121, dated June 7, 2018, and after a review of the entire record, Respondent is found Guilty.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Sanad Musallam from the Police Service of the City of New York.

DERMOT F. SHEA
POLICE COMMISSIONER

EFFECTIVE: 3/25/21



POLICE DEPARTMENT

March 3, 2021

-----X
In the Matter of the Charges and Specifications :

- against

Police Officer Yaser Shohatee
Tax Registry No. 937533
Housing PSA 7

Case No.
2017-17989

Police Officer Sanad Musallam
Tax Registry No. 947817
28th Precinct

Case No.
2017-18368

-----X
At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Javier Seymore, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For Respondent Shohatee: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

For Respondent Musallam: Roger Blank, Esq.
373 Park Avenue South, 6th Floor
New York, NY 10016

To:
HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

POLICE OFFICER YASER SHOHATEE
POLICE OFFICER SANAD MUSALLAM

CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2017-17989

1. Said Police Officer Yaser Shohatee, assigned to the [REDACTED] Precinct, while on and off duty, on or about and between February 20, 2016 and May 14, 2016, in Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said officer did exchange 857 text messages with an underage participant of the Explorer Program outside of any official Department business or function.
P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT –
PROHIBITED CONTACT

2. Said Police Officer Yaser Shohatee, assigned to the [REDACTED] Precinct, while off-duty, on or about and between November 1, 2015 and May 14, 2016, in Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said officer did have an underage participant of the Explorer Program in his residence on at least two (2) occasions and in his personal vehicle without supervision and outside of any official Department business or function. *(As amended)*
P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT –
PROHIBITED CONTACT

3. Said Police Officer Yaser Shohatee, assigned to the [REDACTED] Precinct, while off-duty, on or about and between November 1, 2015 and May 14, 2016, in Kings County, being twenty-one (21) years old or more, he engaged in sexual intercourse with another person less than seventeen (17) years old. *(As added)*
P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT
PROHIBITED CONTACT

New York Penal Law Section 130.25(2) RAPE IN THE THIRD DEGREE

4. Said Police Officer Yaser Shohatee, assigned to the [REDACTED] Precinct, while off-duty, on or about and between November 1, 2015 and May 14, 2016, in Kings County, subjected another person to sexual contact without the latter's consent. *(As added)*
P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT –
PROHIBITED CONTACT

New York Penal Law Section 130.55 SEXUAL ABUSE IN THE
THIRD DEGREE

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POLICE OFFICER SANAD MUSALLAM

5. Said Police Officer Yaser Shohatee, assigned to the [REDACTED] Precinct, while off-duty, on or about and between November 1, 2015 and May 14, 2016, in Kings County, knowingly acted in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen (17) years old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his or her life or health. *(As added)*
P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONTACT

New York State Penal Law
Section 260.10(1)

ENDANGERING THE WELFARE
OF A CHILD

6. Said Police Officer Yaser Shohatee, while assigned to the [REDACTED] Precinct, while on-duty, on or about and between October 27, 2017 and June 21, 2018, did fail and neglect to complete three (3) Disposition of Firearms reports and notify the Desk Officer in regard to the firearm sales. *(As added)*
P.G. 204-13, Page 1, Paragraphs 1&2

SELLING/DISPOSING OF
HANDGUNS TO ANOTHER
UNIFORMED MEMBER OF THE
SERVICE OR TO A LICENSED
FIREARMS DEALER IN NEW
YORK STATE

Disciplinary Case No. 2017-18368

1. Said Police Officer Sanad Musallam, while assigned to the [REDACTED] Precinct, while on and off duty, on or about and between July 3, 2015 and December 31, 2016, in Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did exchange 742 text messages and 80 phone calls with an underage participant of the Explorer Program, known to the Department, outside of any official Department business or function. *(As amended)*
P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONTACT

2. Said Police Officer Sanad Musallam, while assigned to the [REDACTED] Precinct, while off-duty, on or about and between July 3, 2015 and December 31, 2016, in Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: Police Officer did fail to notify a supervising officer after receiving sexually explicit photographs from an underage participant of the Explorer Program, known to the Department.
P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONTACT

3. Said Police Officer Sanad Musallam, while assigned to the [REDACTED] Precinct, while off-duty, on or about and between October 15, 2017, in Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said

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Police Officer improperly contacted a witness in an Internal Affairs Bureau investigation in which said officer was one of the target officers.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
 PROHIBITED CONTACT

4. Police Officer Sanad Musallam, while assigned to the [REDACTED] Precinct, while off-duty, on or about and between July 3, 2015 and December 31, 2016, in Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer on one (1) occasion wrongfully engaged in sexual contact with an underage participant of the Explorer Program, known to the Department.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
 PROHIBITED CONTACT

5. Said Police Officer Sanad Musallam, while assigned to the [REDACTED] Precinct, while off-duty, on or about and between July 3, 2015 and December 31, 2016, in Kings County, being twenty-one (21) years old or more, he engaged in sexual intercourse with another person less than seventeen (17) years old.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
 PROHIBITED CONTACT

New York Penal Law Section 130.25(2)

RAPE IN THE THIRD DEGREE

6. Said Police Officer Sanad Musallam, while assigned to the [REDACTED] Precinct, while off-duty, on or about and between July 3, 2015 and December 31, 2016, in Kings County, subjected another person to sexual contact without the latter's consent.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
 PROHIBITED CONTACT

New York Penal Law Section 130.55

SEXUAL ABUSE IN THE
 THIRD DEGREE

7. Said Police Officer Sanad Musallam, while assigned to the [REDACTED] Precinct, while off-duty, on or about and between July 3, 2015 and December 31, 2016, in Kings County, knowingly acted in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen (17) years old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his or her life or health.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
 PROHIBITED CONTACT

New York State Penal Law
 Section 260.10(1)

ENDANGERING THE WELFARE
 OF A CHILD

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on December 16 and 21, 2020, and January 4, 2021. Respondents, through their respective counsel, both entered pleas of Not Guilty to the subject charges. The Department called Sergeant Yevgeny Vaks as a witness. Respondents testified on their own behalves. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed the evidence in this matter, I find Respondents Guilty and recommend that their employment with the Department be terminated.

ANALYSIS

Respondents are charged with various Patrol Guide violations arising from their respective interactions with a former member of the [REDACTED] Precinct Explorer program (hereinafter referred to as "The Minor").

The evidence offered and admitted by the Department Advocate consisted of eight hearsay statements from The Minor and her mother; the in-court testimony of Sergeant Yevgeny Vaks, an Internal Affairs Bureau investigator; thread analysis of text messages transmitted between mobile telephones used by The Minor, as well as her mother, and by each Respondent; and evidence of 11 photographs sent to Respondent Musallam by The Minor.

Respondent Shohatee admitted to: (1) engaging in a text messaging/telephonic correspondence with The Minor, a person he knew to be a member of the precinct Explorer program, and, therefore, under the age of 17; (2) engaging in electronic communications with The Minor using the Snapchat application; (3) transporting The Minor to and from his apartment,

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where he resided alone; and (4) allowing The Minor to enter his apartment on at least three occasions and to remain inside the apartment for 30 minutes on each event.

Respondent Musallam admitted to: (1) engaging in a text messaging/telephonic correspondence with The Minor, a person he knew to be a member of the precinct Explorer program, and, therefore, under the age of 17; (2) receiving a photograph, among other pictures of The Minor, in a text message from her which depicted The Minor lying prone on a bed in her underwear; (3) deleting some, but not all, of the text messages to and from The Minor; (4) retaining the picture of The Minor in her underwear in the event that she made an allegation of misconduct against him; (5) meeting with The Minor inside his car while parked in front of her home; and (6) placing a telephone call to The Minor's mother after being notified to meet with Internal Affairs investigators.

I find Sergeant Vaks to be a credible witness. As an investigator, his role was to collect relevant evidence; thus, I further find him to be a disinterested witness.

I find Respondent Shohatee's justifications and testimony concerning the contested factual assertions central to this case self-serving and largely unworthy of belief. First, his statement that he did not think that there was anything problematic with him either maintaining such correspondence with The Minor or having The Minor in his apartment and car without another adult present is absurd on its face.

This pattern of misconduct violates the long-standing moral and legal proscriptions against adults interacting with minors as if they were peers. The insidious and sinister nature of his repeated actions would cause any responsible adult, let alone a parent, to recoil in horror.

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This Tribunal also discounts Respondent Shohatee's incredible justification that he was attempting to mentor The Minor in the same way that a police officer had mentored him when he was The Minor's age and experiencing personal difficulties. This conclusory and unsupported assertion was unexplored during his testimony. Still, whether or not he did have such a mentoring relationship in his youth, the relationship he formed with The Minor was inappropriate on its face based upon all the evidence in the record.

I further find that Respondent Shohatee made a false exculpatory statement during his testimony when he asserted that The Minor's mother asked him to help guide her (T. 408-411). In her October 10, 2017, interview with Sergeant Vaks, The Minor's mother directly refuted this assertion, stating that while she recognized Shohatee from seeing him at the [REDACTED] Precinct, she never had a personal conversation with him (Dept. Ex. 4, p. 8-9; T. 124-125). I infer from this false assertion that Respondent Shohatee was conscious of his guilt in this matter and made the statement in an attempt to mislead the Tribunal, falsely suggesting that The Minor's mother authorized him to establish and maintain a relationship with her.

Under New York law, "evidence of post-crime conduct that may in the context of a particular case evince a [respondent's] consciousness of guilt of the offense with which [the respondent] is charged is admissible. A false alibi or explanation for one's actions, intimidation of a witness, destruction or concealment of evidence, or flight may be evidence of consciousness of guilt. A [respondent] may introduce evidence of an innocent explanation for the conduct to rebut the inference of 'consciousness of guilt.' A jury should be advised of the limited probative value of 'consciousness of guilt evidence and must be so advised upon request of the [respondent]" (*NY Criminal Jury Instructions 4.20.1*; *People v Bennet*, 79 NY2d 464, 469-470 [1992]). The Court of Appeals refined its evaluation of the principle, ruling that its probative

weight is “highly dependent upon the facts of each particular case” (*People v Cintron*, 95 NY2d 329, 332-333 [2000]; see *Criminal Jury Instructions 2nd*, General Applicability, Consciousness of Guilt).

I had the opportunity to observe Respondent Shohatee’s demeanor as he testified, albeit remotely. I found his studied nonchalance as he advanced his assertions that there was nothing untoward regarding his conduct with The Minor shocking.

Turning to Respondent Musallam, I find his testimony concerning how he conducted himself with The Minor to be self-serving and unworthy of belief. I further find he evinced a consciousness of guilt in three respects, as set forth below.

The Call to The Minor’s Mother

Respondent Musallam claimed that he was attempting to determine why he was summoned to a meeting with the Internal Affairs Bureau in calling The Minor’s mother. Such an explanation is patently false and defies logic. During his testimony, Respondent Musallam admitted that when he asked Sergeant Vaks what the inquiry concerned, Vaks told him he would find out during the interview. Respondent Musallam then approached his union delegate, Police Officer Susan Porcello, who informed him that the inquiry concerned The Minor.

First, Respondent Musallam’s call to The Minor’s mother more than likely came as a surprise to her, as she would not have expected Respondent Musallam to obtain information that she had provided to Internal Affairs Bureau investigators in confidence. The assertion that he was aware of her cooperation could be construed as an act of intimidation, mainly since Respondent Musallam is a police officer, carrying with it the prospect of misusing his office to protect his interests. Viewed from the mother’s perspective, a police officer whom she believed had been sexually abusing her daughter might well be disposed to either exact retribution for

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providing information about him or attempt to prevent her daughter from giving further details to investigators, or both. While no explicit threat was made during the conversation he had with her, his assertion that he “had a family” and “didn’t want any trouble” could easily be interpreted as a thinly veiled invitation to recant her statements.

Second, assuming for the sake of argument that Respondent Musallam had a conversation with his union delegate as he described it, there was no reason to inquire further into the matter with The Minor’s mother. Once he learned that the inquiry would be about The Minor, he would have known the precise contours of any questioning. The purpose of the call, regardless of what he believed his status with respect to the investigation to be, was unlikely to be merely informational, as he claimed; it is more likely than not that his call served to let The Minor’s mother know that she could not provide information to investigators without him learning of her cooperation.

The Photograph

I have reviewed the photograph of The Minor, which depicted her lying prone on a bed, clad in her underwear (Dept. Ex. 6). I find that its incriminating nature should have been immediately apparent to any reasonable adult, let alone a police officer. By his admission, Respondent Musallam retained this photograph as “insurance” if The Minor accused him of malfeasance. If his relationship with The Minor were wholly appropriate, as he urges this Tribunal to find, it would be unnecessary to retain such a photograph “just in case.” It is more likely than not that Respondent Musallam kept this photograph, being aware of his guilt of the misconduct charged in this case, in a corrupt scheme to undermine The Minor’s credibility by suggesting that she possessed an unchaste character. It is not credible that, given his relationship with The Minor’s mother, he would not have given it to her.

Respondent Musallam claimed that he never brought the existence of this photograph to the attention of the Explorer coordinator because The Minor had already been suspended by the time he received the picture, and he “didn’t want to get [her] in more trouble.” I find this assertion self-serving and unworthy of belief. He also conceded under oath that he never brought the photograph to the attention of his chain of command but never offered a credible explanation for why he did not do so.

I find that Respondent Musallam was more likely than not aware of the propriety of reporting the photograph’s receipt to the chain of command but elected not to do so because such a revelation would likely cast suspicion on him, rather than insulating him from a future false allegation. Even viewed in its most benign light, the photograph would cause any competent investigator to question why Respondent Musallam had a picture of a scantily clad minor in his possession. Whether he retained the image as a trophy of his illicit relationship with The Minor or as a cudgel against her credibility, there is no reasonable explanation for his continued possession of the photograph that is consistent with innocence.

Furthermore, given his relationship with The Minor’s mother, it defies logic that he would not have shared such an inappropriate photograph with her out of concern for The Minor.

Respondent Musallam’s Wife

During cross-examination, Respondent Musallam attempted to deflect the incriminating effect of retaining the photograph by asserting that, in rebuttal of the Department Advocate’s assertion, he was not the only person who knew of the existence of the picture, that his wife also knew of its existence. Upon further questioning, he admitted that he did not bring the presence of the photograph to his wife’s attention; in fact, she discovered the picture during an examination of his mobile telephone.

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I find that Respondent Musallam attempted to advance a false narrative during his trial while under oath. I further find that he tried to promote this false assertion because he was conscious of his guilt of the charged misconduct. Having observed his demeanor at trial, I found his testimony, in general, to be evasive and calculated. His inability to explain why he never took decisive action to cut off contact with The Minor if he believed that she was “trouble” belies the obvious: he maintained the communication and the relationship because it was in his depraved interest to do so.

The following facts are not in dispute in this case.

At the relevant times at issue, Respondent Yaser Shohatee and Respondent Sanad Musallam were assigned to patrol duties in the [REDACTED] Precinct. Neither respondent was given responsibilities with the precinct’s Explorer program. However, Respondent Shohatee, who was assigned to work with the Auxiliary Police program, sometimes assisted the Explorer coordinator, Police Officer Porcello, at her request.

The Minor participated in the [REDACTED] Precinct Explorer program between the fall of 2015 and the spring of 2016. There is no dispute that during this period, she was legally incapable of consenting to sexual activity. The Minor reached 17 years old, the legal age of consent, in [REDACTED] 2017 (Dept. Ex. 1 at 15).

Respondent Musallam first met The Minor when her mother had called 911 for assistance in locating The Minor, who was suspected of running away from home. Respondent Musallam responded to the call and was still present at The Minor’s house when she returned. Respondent Shohatee first interacted with The Minor when she was at the [REDACTED] Precinct participating in the Explorer program activities.

The following is a summary of the evidence at trial.

The Minor's Statements

The Department offered evidence of eight statements made by The Minor and her mother. The statements are summarized as follows:

1. Interview of The Minor by Kings County District Attorney's Office and Internal Affairs Bureau on May 1, 2017 (Dept. Ex. 1)¹.
2. Telephone Conversation with The Minor's mother on August 28, 2017 (Dept. Ex. 3).
3. Telephone Conversation with The Minor's mother on October 10, 2017 (Dept. Ex. 4).
4. Interview of The Minor and her mother in [REDACTED] on October 11, 2017 (Dept. Ex. 5).
5. Telephone Conversation with The Minor's mother on October 18, 2017 (Dept. Ex. 7).
6. Telephone Conversation with The Minor and her mother on October 18, 2017 (Dept. Ex. 8).
7. Telephone Conversation with The Minor and her mother on November 20, 2017 (Dept. Ex. 10).
8. Interview of The Minor by Internal Affairs Bureau and Special Victims Unit on June 7, 2018 (Dept. Ex. 11).

I find The Minor's mother to be a credible witness, mainly because her statements have the character of admissions against herself and The Minor's interests. Her statements to investigators involve the disclosure of highly unflattering information about her daughter. Under the circumstances presented in this case, I find that the statements are reliable because the only benefit she could reasonably seek would be assistance for her daughter. There is also a disincentive to fabricating accusations against Respondents because she acknowledged that her husband was unaware of the interactions between her daughter and Respondents and her cooperation with investigators.

¹ The complainant was interviewed on May 1, 2017, by an Assistant District Attorney in the Trafficking Unit of the Kings County District Attorney's Office; it is unclear how she came to their attention (T. 166-167). Sergeant Vaks testified that in his initial review of the case, he conducted a record check and learned that the complainant had been arrested on one occasion for a drug possession charge (T. 189, 392). Sergeant Vaks testified further that the Kings County case originally focused on the complainant and her alleged pimp before it expanded to include allegations of misconduct committed by Members of Service (T. 211). According to Sergeant Vaks, the Kings County District Attorney's Office was treating the complainant as a victim of sex trafficking (T. 394).

Based upon the entirety of the record, considering the relevant, credible evidence, I credit much of The Minor's account. I make this finding mindful that The Minor's statements are hearsay; I am also aware of several factors present in the circumstances surrounding the making of those statements, which, under other circumstances, might weigh against a finding of credibility. Under the circumstances of this case, however, the negative effect of those factors is outweighed by: (1) the corroboration of The Minor's statements by Respondents' admissions to wrongful behavior; (2) the inherent implausibility of the statements Respondents made in an attempt to explain the misconduct they denied; and (3) the evidence of Respondents' consciousness of guilt.

Hearsay is an out-of-court statement made by a declarant offered to prove the truth of the matter asserted (Prince Richardson, 8-101). Hearsay is admissible in administrative proceedings and may form the sole basis for a finding of fact (*See* NYC Charter §1046[c][1]; 38 RCNY §15-04[e]; *Gray v. Adduci*, 73 NY2d 741, 742 [1988]; *Dep't. of Correction v. Jackson*, OATH Index No. 134/04 at 4-5 [May 5, 2004]; *Police Dep't. v. Ayala*, OATH Index No. 401/88 [Aug 11, 2019], *aff'd sub nom.*, 170 AD2d 235 [1st Dep't. 1991]).

Hearsay must have probative value and bear some indicium of reliability in order to be given significant weight (*See Dep't. of Hous. Preservation and Dev. v. Devron*, OATH Index No. 1533/11 at 16 [Dec. 21, 2011]). To ascertain the probative value and reliability of hearsay, courts and tribunals have relied on several factors, including "the identity of the declarant, the availability of the declarant to testify, the declarant's personal knowledge of the facts, potential bias of the declarant, the detail and range of the hearsay, whether the statements were oral or written, sworn or unsworn, the degree to which the hearsay is corroborated, the centrality of the

hearsay evidence to the agency's case, and the magnitude of the administrative burden should hearsay be excluded" (*Dep't. of Envtl. Prot. v. Cortese*, OATH Index No. 1613/06 [Sep. 12, 2006], citing *Maloney v. Suardy*, 202 A.D.2d 297 [1st Dept. 1994]).

According to her mother, the Minor is a person who, during the relevant period at issue in this case, struggled with substance abuse issues. The mother sought the assistance of the police to curb her child's behavior. In one of her interviews, The Minor asserted that she told the police that she did not want to go back home without specifying why she felt that way. In later interviews with investigators, The Minor's mother asserted that she had not told The Minor's father about the interactions with Respondents because The Minor had asked her not to; she was also concerned that if he were to find out about them, that he would "do something." The Minor's mother also admitted to encouraging The Minor to cooperate with the investigation.

The Minor is, based upon the circumstances of this case, a victim. In this case, it means that she was exposed to adult sexual behavior where the participants wield disparate power. Both Respondents are adult males and, more importantly, authority figures with apparent power. They are also authority figures who enjoy an aura of presumptive credibility in some venues.

According to her statements, Respondent Musallam was solicited by the mother to "look out" for The Minor. That parental imprimatur is a two-edged sword: it invited Musallam to exercise quasi-parental authority over The Minor, presumably in a benevolent manner, but also imbued Musallam with power over The Minor. It could have also created a reasonable expectation in the mind of The Minor that if she did not comply with Respondent Musallam's wishes, he could cause difficulty for her with her parent.

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Independent of the relationship the mother may have attempted to forge between Respondent Musallam and The Minor, police officers have a moral and legal duty to conduct themselves professionally with the public, especially with victims of crime or otherwise vulnerable persons.

In this context, assessing the common credibility factors becomes more challenging because The Minor's incentive to create a false narrative is tied to whether or not she would reasonably believe that her assertions would be credited. Because the individuals she would accuse are themselves members of law enforcement, she could reasonably question whether her accusation would be taken seriously. She might also be concerned that this Department might discount an otherwise credible charge in an act of self-preservation. A timeline of delayed disclosures, which might be a negative credibility factor in another context, may be less damaging when the element of fear is taken into account. In an interview on June 7, 2018, The Minor told Sergeant Vaks that she "doesn't trust cops." If she had been victimized as she claimed by police officers, this assertion of distrust would be foreseeable. Moreover, in the same interview, The Minor explained that she disclosed the true nature of her relationship with Respondent Musallam after she grew tired of her mother extolling his virtues. One of The Minor's stressors may well have been her mother's misplaced trust in Respondent Musallam, based upon the mother's ignorance of the true nature of The Minor's relationship with him.

In her June 7, 2018, statement, The Minor alleged that before any sexual activity took place, she and Respondent Shohatee had corresponded over Snapchat for "a few days;" Respondent Shohatee admitted that he communicated with The Minor over this platform (Dept. Ex. 11, p. 9). The Minor alleged further in this statement that Shohatee asked her if she "would

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be down to have sex” and asked her to send photographs (*Id.*). The Minor alleged that while she initially had misgivings, she eventually sent Shohatee pictures and continued corresponding with him.

I find that the additional facts provided in her later statement are more likely than not the product of The Minor’s decision to give a more fulsome description of the event rather than a fabrication. Between her May 1, 2017, statement and her June 7, 2018, statement, The Minor had relocated to another state; disclosed information about her relationship with Respondent Musallam, which she had initially withheld; relapsed, resuming her substance abuse; and began attending a methadone clinic daily. Given her life’s already tumultuous nature to that point, the additional changes she experienced may have disposed her to be more forthcoming in her disclosures. However, she maintained a distrust of police officers and a reluctance to testify in open court.

In a scenario where an accusation is met by denial, corroboration of the accusation takes on greater significance; so, too, does any statement or act on the person accused, which suggests consciousness of guilt. In this case, both Respondents denied any sexual activity with The Minor while admitting other questionable aspects of their respective relationships. Each Respondent made factual assertions, which, in the view of the Tribunal, constitute evidence of consciousness of guilt, which bolstered The Minor’s credibility on contested issues of fact and corroborated her hearsay statements.

Text Message Evidence

Respondent Musallam offered evidence of text messages saved to his mobile telephone between himself and The Minor (Resp. Ex. B). The texts contain numerous attempts by The

Minor to initiate a conversation with Respondent Musallam between March 2016 and September 2016. He often, but not always, responded but appeared disinterested: he said hello, told The Minor several times to call the Explorer coordinator, to listen to her mother, and to call 911 if there was an emergency. Respondent Musallam also told The Minor not to send photos or emojis because she could get him in trouble; that she needed to be good and stay out of trouble; and to be a good person.

Respondent Musallam did not cut off contact with The Minor until the last few messages, and when he did so, it was passive. In July 2016, The Minor texts, "My love, I have a big crush on you." Musallam responded, "What did I tell you about texting me like this? U want me to block ur number?" followed by an illicit photo, which he firmly tells her not to send ever again and that he will contact her mother. He did not respond to further texts and failed to contact The Minor's mother about the photos.

Respondent Musallam also offered evidence of text messages between himself and The Minor's Mother (Resp. Ex. C). These messages are summarized as follows:

- a. March 2016 - Mother asks him for help, says that he is like a brother and means a lot to her child. Musallam worried The Minor is becoming too attached and that she needs therapy.
- b. July 2016 - Mother asks him to contact The Minor and says he cannot message her because of emojis and flirty messages. The mother tells him he should probably block her child. The Mother and Musallam discuss sending The Minor to rehab; Musallam says he is happy she is getting help.
- c. August 2016 - The Minor texts from her mother's phone that she is trying to clean up her life and get a diploma. Musallam says he is proud of her- he does not respond to non-illicit photos.
- d. September 2016 - Mother asks Musallam to run the license plate of The Minor's friend; he says he doesn't have access.

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- e. December 2016 - Mother asks for help because The Minor is missing. Musallam says he cannot get involved personally, and The Minor does not listen- he says he can help file a report but cannot have any contact with The Minor- could get in trouble.
- f. January 2017 - Mother texts about The Minor's overdose; Musallam is glad to hear The Minor is alert.

Respondent Shohatee Disciplinary Case No. 2017-17989

Specification 1: Text Messages

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent Shohatee exchanged 857 text messages with an underage member of the Explorer program outside of any official Department business or function².

Although the text messages' content is unavailable, the frequency of the messages and the times of the communication undermine Respondent Shohatee's stated reason for the contact (see Dept. Ex. 2).

² I take judicial notice of the following regulations as instructive, although they were not explicitly pled in the specifications alleging misconduct:

Fraternization

Section 3.11.00 of the NYPD Law Enforcement Exploring Program Manual establishes guidance for interactions between adult leaders and participants in the Explorer program:

The NYPD and the Greater New York Councils Learning For Life do not condone nor permit fraternization between Explorers and their adult leaders or other affiliated adults. This applies to all youth members. Fraternization is not morally appropriate, nor is it in keeping with the relationship between youth members and adult leaders prescribed in the programs of the NYPD or those of the Greater New York Councils Learning For Life. Fraternization with other Explorers within the program is strictly prohibited.

(NYPD Explorers Manual 2013).

Social Media

Patrol Guide procedure 203-32(9) establishes this Department's social media policy concerning minors:

Do not engage in any type of social media contact (e.g., "friending," "following," etc.) with minors they interact with in the course of their employment with the Department.

(P.G. 203-32[9]; Interim Order 22 [April 15, 2016]).

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Respondent Shohatee testified that he has been the Auxiliary Coordinator since 2012 and explained there was some coordination between the Auxiliary and Explorer programs, which fell under the Special Operations Lieutenant's supervision, mostly when there were community events. He asserted Officer Porcello, the Explorer Coordinator, asked him for help with drill ceremonies due to his military experience. He sometimes covered for her, checking in on the Explorers if she took a break (T. 404-07).

Respondent Shohatee testified that he first met The Minor when her mother brought her into the precinct, saying she was "problematic" and needed guidance. He suggested the Explorer program and indicated that he could help her since he sometimes worked with the coordinator. Respondent Shohatee did not provide or assist with her Explorer application, and next saw The Minor when she was an Explorer (T. 408-10). He claimed he only engaged in conversations with The Minor when Porcello asked him to assist with the Explorers; he claimed further that it was apparent that The Minor needed help because she was a "chronic runaway and in trouble." Respondent Shohatee testified that he told The Minor "that she needed to get her act together" and that knowledge and education were "power," but felt she "brushed off" his advice. He continued to engage in these conversations with her (T 410-11).

Respondent Shohatee acknowledged that he communicated with The Minor outside of work hours, initially on the Snapchat app, after The Minor noticed he had the app on his private phone, but eventually provided her with his personal cell phone "to text . . . if she needed help." He had never exchanged Snapchats or phone numbers with any other member of the Explorer program but claimed he wanted to help The Minor in the same way that his school resource officer had guided him in his teen years. Respondent Shohatee claimed that The Minor reached

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out for guidance on dealing with her mother; according to Shohatee, their relationship was complicated due to The Minor cutting school and running away. He denied ever discussing a substance abuse problem with The Minor and did not know if she was ever under the influence of drugs or alcohol when they spoke; he did recall that he observed her smoking cigarettes. Respondent Shohatee did not know The Minor's exact age but knew she was in high school and assumed she was 16 or 17. He did not think at the time that having over 500 communications with a minor teen was an issue but acknowledged that "he could see how it would look" (T. 412-14, 423-29, 432-33, 435, 455). He acknowledged that the phone records indicated he initiated calls with The Minor in the middle of the night (T. 436, 450).

The Minor alleged in her June 7, 2018, statement that Respondent Shohatee had asked her to send him pictures of her over the Snapchat platform, which she did (Dept. Ex. 11, p. 9).

The undisputed evidence establishes that Respondent Shohatee corresponded with a minor participant in the Explorer program, extending over several months. He admitted that the telephone number attributed to him in Dept. Ex. 2 was, in fact, his personal mobile telephone number. Respondent Shohatee further admitted that he was aware that The Minor was a member of the precinct Explorer program and was likely a high school student. He also admitted that he provided The Minor his mobile number and his Snapchat account information. Respondent Shohatee conceded that he was not assigned to the Explorer program and had no official responsibilities in that regard. That he elected to stop using the Snapchat platform and decided to continue the correspondence over text messaging is no defense to a charge that he engaged in sanctionable conduct.

The only explanation provided for his conduct was a generalized and unconvincing assertion that he engaged in the correspondence to assist The Minor in working out some personal issues at her mother's request; The Minor's mother, however, credibly denied that she had done so (Dept. Ex. 4, p. 8-9). Moreover, he did not contact her mother or suggest enlisting Department resources, a mental health professional or even a social worker. There is no reasonable view of the evidence that supports a finding that Respondent Shohatee was genuinely motivated to assist The Minor.

The reasons advanced by Respondent Shohatee for the sustained communication are unpersuasive, without regard to the use of the messaging as an instrumentality of other misconduct with which he has been charged. He even conceded that he could understand how the evidence of such messaging might be perceived negatively (T. 428).

I find that Respondent Shohatee's ongoing communication with The Minor in this manner was contrary to this Department's good order, discipline, and efficiency.

Based upon the foregoing, I find Respondent Shohatee Guilty of Specification 1.

Specification 2: Underage Explorer in Residence and Vehicle

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent Shohatee had an underage participant of the Explorer program in his residence, on at least two occasions, and in his vehicle, without supervision and outside of any official Department business or function³.

Respondent Shohatee admitted that he met The Minor three times, while off-duty, after 2200 hours. He never reported these meetings to anyone in his chain of command before his

³ See Section 3.11.00, Explorers Manual (2013).

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official Department interview nor did he ever contact The Minor's mother about them.

Respondent Shohatee claimed that they met up to talk at about 0030 hours, after he had gone off duty, on the first occasion and brought her to his apartment when she needed a restroom; he asserted that the area was mostly residential, and restaurants would have been closed at the time. He admitted that he had two pet Teacup Yorkies and resided alone. Respondent Shohatee estimated that The Minor was only in his apartment for approximately 30 minutes and denied that any sexual contact took place (T. 414-16, 431).

Respondent Shohatee next recalled an encounter with The Minor, possibly in March 2016, where she contacted him to talk because she was having an issue with her mother. He claimed that he offered to meet The Minor after he went off-duty, at about 0030 hours; she indicated it would be "easier" to meet at his apartment, so he sent a cab. Respondent Shohatee testified that The Minor was upset and distracted when she arrived, and he did not feel she was listening to him. He did not know if she was under the influence of an intoxicant. Respondent Shohatee estimated that The Minor was in his apartment for 30 minutes before sending her home in a cab, for which he paid. He again denied that there was any sexual contact during this visit (T. 416-18).

The third time Shohatee and The Minor were alone together was in his vehicle. Respondent Shohatee testified that this interaction took place after The Minor called him at night and asked to meet to discuss a fight with her mother. He stated that he told The Minor, "I'll come to meet with you, just tell me where to meet you." They met at about 0030 hours, while he was off-duty, on 11th Avenue and Bay Ridge Parkway, where The Minor entered Respondent Shohatee's vehicle without another adult present. According to Respondent Shohatee, the Minor

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entered his vehicle and vented about her mother being “on top” of her and yelling at her.

Respondent Shohatee told The Minor that she needed to live by her mother’s rules while she was under her roof. He suggested The Minor get an education and go to college if she wanted to be free of her mother; according to Shohatee, this upset The Minor and caused her to “storm out” after about ten minutes. Respondent Shohatee testified they had no contact after this (T. 418-19, 446).

By his admission, Respondent Shohatee allowed The Minor to enter his apartment, late at night with no others present, on at least two occasions. As discussed above, he was aware that she was a member of the Explorer program and was likely in high school. Respondent testified that on the occasions when The Minor spent time in his apartment, it was late at night, after his 1600-2400 tour. Respondent also admitted that at the time The Minor visited his apartment, he lived alone.

In her May 1, 2017, statement, The Minor stated that on the occasions that she went to Respondent Shohatee’s apartment, he would send her a text message, asking if she wanted to come over (Dept. Ex. 1, p. 26). It should be noted that while Respondent Shohatee admitted to The Minor being in his apartment for no more than 30 minutes, in the same statement she alleged that he would pick her up at about 0100 or 0200 hours, then drop her home at around 0400-0500 hours, before her father would wake up for work (*Id.* at p. 29, 47).

Respondent testified that he did not think having The Minor in his apartment was problematic. As he described their first nighttime meeting, he asserted that he met her at 11th Avenue and Bay Ridge Parkway in his vehicle; he then took her to his apartment to use his bathroom. According to Respondent Shohatee, they remained inside the apartment to discuss

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problems she was having with her mother. I find his explanation that The Minor had to use his bathroom to be a fabricated, after-the-fact rationalization tailored to justify inappropriate conduct.

Respondent Shohatee admitted further that The Minor contacted him on another occasion and asked to come over to his apartment; on this occasion, Respondent sent a taxi for her, claiming that he did so because “parking is hard to find in Brooklyn” (T. 442).

Respondent Shohatee admitted further that on one other occasion, he again met The Minor at the intersection of 11th Avenue and Bay Ridge Parkway, where she entered his vehicle and engaged in another conversation with him.

It is highly inappropriate for an adult to permit a minor with whom he is unrelated into either an apartment or a vehicle where no other adults are present. Moreover, this Department has explicitly stated that there shall be no fraternization between Explorers and their adult leaders. Thus, any meetings Respondent Shohatee had with The Minor could not have been in furtherance of Department business since such meetings would violate the Department’s non-fraternization policy.

I find that the clandestine nature of the meetings, in his car after meeting The Minor away from her home and on one occasion facilitated by a taxi transporting her to his apartment, is evidence of Respondent Shohatee’s consciousness of the illicit nature of the meetings. These meetings all occurred near midnight, which is further evidence that he was aware that they were improper. The circumstances alone are sufficient to undermine Respondent’s unsupported defense of an altruistic motive. I further find that these meetings and the circumstances under which they were conducted were contrary to this Department’s good order, discipline, and efficiency.

Based upon the foregoing, I find Respondent Shohatee Guilty of Specification 2.

Specification 3: Intercourse with a Person under the Age of 17

Specification 4: Sexual Contact without Consent

Specification 5: Endangering the Welfare of a Minor

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent Shohatee, being 21 or more, engaged in sexual intercourse with a person less than 17.

The findings of fact and analyses included in the analyses of Specifications 1 and 2 are repeated and incorporated by reference.

In her May 1, 2017, and June 7, 2018, statements, the Minor alleged that she had sexual intercourse with Respondent Shohatee four or five times at his apartment in the winter of 2015-2016. During this time, The Minor was 15 years old and legally incapable of consenting to those acts (Penal Law § 130.05[3][a]). Respondent Shohatee admitted to meeting with The Minor in his apartment on two occasions and his car on one occasion. He further admitted picking her up and driving her to his apartment, then driving her back near her home once. On another occasion, he sent a taxi to bring her to his apartment and then sent her home in another taxi.

I find that The Minor's accusations regarding Respondent Shohatee, while differing in some respects, did not vary in any material manner. I further find that Respondent Shohatee's denials concerning these allegations are incredible, given: (1) his patently absurd claim that he saw nothing wrong with having a minor in his apartment late at night without another adult present; (2) his equally absurd claim that he saw nothing problematic about maintaining an extensive electronic correspondence with a minor; (3) his self-serving, and factually unsupported, assertion that he was attempting to help The Minor sort out problems she was

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experiencing with her mother; and (4) his false statement that The Minor's mother asked him to support her in "straightening out" her life.

Based upon the foregoing, I find that Respondent Shohatee had sexual intercourse with The Minor on at least two occasions inside his apartment. I further find that during the period charged in the specification, The Minor was legally incapable of consenting to sexual intercourse. I further find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent Shohatee subjected a person to sexual contact without consent.

I, therefore, find Respondent Shohatee Guilty of Specifications 3 and 4.

I further find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent Shohatee acted in a manner likely to endanger the physical, mental or moral welfare of a child less than 17 or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to life or health.

I find that the pattern of conduct Respondent Shohatee engaged in with The Minor: making an explicit invitation to have sex with him and taking her to his apartment for sexual assignations is of character that it would likely endanger the physical, mental or moral welfare of any person less than 17 years old. In this case, The Minor was a particularly vulnerable person, having already experienced a tumultuous home life and substance abuse. The violation of trust that was part of Respondent Shohatee's abuse of The Minor is likely to have an effect on her future personal relationships. The trauma Respondent Shohatee's conduct caused The Minor is incalculable and may well last a lifetime.

Based upon the foregoing, I find Respondent Shohatee Guilty of Specification 5.

Specification 6: Failure to Notify Desk Officer

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent Shohatee failed to complete three Disposition of Firearms reports and notify the Desk Officer of the firearms sales.

Patrol Guide procedure 204-13 requires MOS who sell a weapon to notify the Desk Officer at their command without delay; prepare an ACQUISITION OR DISPOSITION OF FIREARMS BY POLICE OFFICERS REPORT TO N.Y. STATE POLICE (P.D. 424-150); and submit the completed form to the Desk Officer (P.G. 204-13 [eff. 4/10/09]).

Respondent Shohatee admitted that he forgot to notify the Department that he had sold three firearms to a licensed dealer. He estimated that only a few months elapsed between acquiring the guns and the Department's discovery of their existence. Respondent Shohatee did not explain other than that he had a "lot on [his] mind" as he was preparing to enter into an arranged marriage at the time (T. 421-23).

Based upon the foregoing, I find him Guilty of Specification 6.

Respondent Musallam: Disciplinary Case No. 2017-18368

Specification 1: Text Messages

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent Musallam exchanged 742 text messages with an underage member of the Explorer program outside of any official Department business or function.

The NYPD Explorers Manual unambiguously prohibits fraternization between participants in the Explorer program and Members of Service (see supra discussion of fraternization policy in Footnotes 1 and 2).

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Respondent Musallam testified that he first met The Minor when he responded to a 911 missing person call made by her mother. While he was filling out a report, The Minor returned home, and Respondent Musallam departed the residence. He testified that he was aware of multiple EDP and the missing person calls The Minor's mother made in the subsequent months (T. 460-65).

He recalled a specific incident where The Minor was brought to the precinct, and he was assigned to accompany her via ambulance to the hospital with her mother. He had a conversation with the mother about The Minor's issues, specifically concerning truancy and running away. The Minor's mother asked if she could give Respondent Musallam's phone number, which the mother had previously obtained, to The Minor to contact him if she ever needed help or guidance. According to Respondent Musallam, the mother did not mention that The Minor had a drug problem.

Respondent Musallam testified that he agreed to the mother's request and after that began receiving a "whirlwind" of messages from both mother and The Minor. The mother usually messaged him when The Minor did not return home. Respondent Musallam described the messages The Minor sent him as "small talk" where she would reach out and say hi, and he would tell her to listen to her mom and stay in school. He testified that he saw The Minor on the street "all the time" hanging out with "kids that looked shady." Respondent Musallam claimed he would encourage The Minor to go home to her mother (T. 465-71). At some point, Respondent Musallam suggested the Explorer program to the mother; she thanked him and said she would look into it for The Minor. He was not personally involved with the Explorer program (T. 497).

Respondent Musallam acknowledged on cross-examination that he could have blocked The Minor's phone number and put an end to their communication earlier, specifically after the incident where she got in his car, and he realized she needed "professional help." He stated that he did not want to make this step and "push her to the edge" by "fully closing the book" on being available in an emergency (T. 555-58).

Assuming for the sake of argument that Respondent Musallam did, as he testified, enter into the electronic correspondence motivated by a genuine desire to support The Minor, the volume of the messages, their content⁴, and a sense of professionalism should have caused him to conclude that the messaging did not relate to any official business of this Department (see Dept. Exs. 2, 9). By his admission, he came to understand that the nature of the texts he received from The Minor was "flirty." He further admitted that The Minor sent him pictures of himself/herself, which he described as "weird and unusual but not inappropriate." The number of text messages, standing alone, suggests that the communication was personal and on peers' level, which Respondent Musallam and The Minor were not.

Respondent Musallam never suggested to The Minor's mother that she should seek a mental health professional's intervention when The Minor sent him sexually suggestive photographs of herself or when she sent him pictures that suggested that she may be self-mutilating. I find that in forbearing from notifying The Minor's mother, he placed his self-interest ahead of The Minor's.

⁴ The Tribunal was only able to consider the evidentiary value of the text messages Respondent Musallam disclosed to Internal Affairs investigators on October 16, 2017. He admitted that he deleted the messages he received from The Minor, which predated the oldest message remaining on his mobile telephone, dated March 10, 2016 (Respondent's Exhibits B, C).

Even though he professed to The Minor's mother that he purposely distanced himself from communicating with The Minor, he admitted that he never cut the communication off by blocking her mobile number or notifying his supervisor that he wished to have no further contact with her. Even though he presented evidence of text messages, it is troubling that he admittedly deleted some. While he casually admitted to the communication with The Minor, it is noteworthy that he had her number saved in his personal mobile telephone under her name; keeping her information in a contact was unnecessary to provide the type of support he claimed to be rendering.

Under these circumstances, Respondent Musallam's continued communication with The Minor in this manner violated this Department's fraternization policy as it pertained to the Explorer program. I further find that his conduct was contrary to this Department's good order, discipline, and efficiency.

Based upon the foregoing, I find Respondent Musallam Guilty of Specification 1.

Specification 2: Failure to Notify Supervisor

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent Musallam failed to notify a supervisor after receiving sexually explicit photographs from an underage participant in the Explorer program.

Respondent Musallam testified that in July 2016, The Minor sent him an unsolicited photo of her lying on her stomach in underwear. In response, Respondent Musallam "basically scorned her and yelled at her and told her [he] would tell her mother and . . . don't ever send . . . stuff like this." He denied requesting photos of The Minor in her underwear at any point (T. 487-89, 546).

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Dept. Ex. 6 is a photograph of The Minor that Respondent Musallam admitted she sent him, although he asserted that it was not at his request. I have examined the exhibit and find that it is of such character that any responsible adult, let alone a Member of Service, would have recognized as inappropriate, warranting immediate notification to their supervisor to insulate themselves from scrutiny. The picture is of The Minor, lying on her stomach on a bed, wearing a shirt and thong underwear, revealing a large area of her buttocks.

Respondent Musallam testified that before receiving the July 2016 photo, he had received texts and pictures from The Minor that he thought were “not inappropriate but weird and unusual,” including a photo of The Minor’s face with a “Goth” filter- termed the “Joker photo” in March 2016. When he received the Goth photo, he went to Police Officer Porcello, the Explorer Coordinator, and gave her a copy of the image. Porcello said she would handle it, and Respondent believed this was why The Minor was suspended from the Explorer program. He claimed that he did not show Porcello the July 2016 photo because “she already got kicked out of the Explorer Program and I already scorned and yelled at her, so I felt like I didn’t want to . . . make it bigger than it was.” Respondent Musallam testified further that he felt like The Minor had already been punished by being thrown out of the Explorer program (T. 488-90).

Respondent Musallam claimed that no one in the Department was aware of this photo until Respondent’s GO-15 in October 2017; he asserted that he saved it because he was concerned about potential trouble with the job. He offered that his wife was aware of the photo but suggested that she was unbothered, given the content; he admitted only on cross-examination that he had not shown it to her but that she discovered it while searching through his phone. Respondent Musallam did not advise The Minor’s mother of any photos that The Minor sent

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him, including one in August 2016, which suggested that she might have been self-mutilating. Respondent Musallam testified that he was much more distant and less responsive to both The Minor and her mother in July 2016, ceasing all communication with The Minor in September 2016, months after he received the inappropriate photo, and with her mother in January 2017 (T. 486-91, 504, 516, 527, 546-51).

Respondent Musallam denied that he engaged in calls or texting with other Explorers or troubled minors; he asserted that he had never developed this kind of consistent contact with any other minor and their parent during his career (T. 502).

I find that there is no reasonable explanation for the retention of such a photograph by any adult. Respondent Musallam should have treated this photograph's receipt as if he had received a bundle of cash in an unmarked envelope: immediately notify his supervisor and contact Internal Affairs. Respondent Musallam testified that the reason he did not report the receipt of the picture to the chain of command was his desire to avoid getting The Minor "in more trouble."⁵ It is unexplainable that he did not contact The Minor's mother regarding the photograph. He further admitted that he was aware that possession of the picture could "get him into trouble." The first time Respondent Musallam brought this photograph to the attention of an official of this Department was when he provided it to Internal Affairs investigators at his Department interview, 15 months after its receipt. Respondent Musallam conceded that as a

⁵ It is undisputed that over three months before the receipt of this photograph, he received another photograph of The Minor's face, which he brought to the attention of the Explorer supervisor, Police Officer Porcello. The Minor was subsequently suspended from participation in the Explorer program, although the specific reasons for the suspension are not part of the record. In an official Department interview, Police Officer stated that Respondent Musallam did not show her the picture in Department Exhibit 6 and had only shown her the picture of The Minor's face.

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parent, he would have been upset had he learned that his child had sent such a photograph to an adult and would have wanted the adult to contact him immediately.

I find that the possession of such a photograph by a Member of Service violated the Patrol Guide prohibition against fraternization as it pertained to the Explorer program. I further find that his conduct was contrary to this Department's good order, discipline, and efficiency.

Based upon the foregoing, I find Respondent Musallam Guilty of Specification 2.

Specification 3: Improperly Contacting Witness

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent Musallam improperly contacted a witness in an Internal Affairs investigation in which said the officer was one of the target officers.

The findings of fact and analyses pertaining to Specifications 1 and 2 are repeated and incorporated by reference.

The Minor's mother told Sergeant Vaks on October 18, 2017, that Respondent Musallam called her because he was being interviewed by the Internal Affairs Bureau and wanted to know what the subject matter of the inquiry was. Respondent Musallam admitted that he called The Minor's mother but did so only to obtain information about the prospective interview and not intimidate her.

Respondent Musallam was notified about a GO-15 interview in October 2017; he stated he had no idea what it was about until he spoke to his delegate, Police Officer Porcello, who advised him it had to do with The Minor. He admitted that he then called The Minor's mother, with whom he felt he had a good relationship, to "have an idea of why I was going in." They had not communicated for over ten months at this point. The mother told him it had "nothing to do with him," that she had related "nothing but good things," and that he was a "brotherly"

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figure to her child. Respondent Musallam testified that he told the mother he hoped she did not take it personally that he stopped trying to help The Minor, explaining to her “it was obvious her child was getting too obsessed and attached . . . and I didn’t want this to blow over because I had a family . . . I didn’t want my family getting involved” (T. 492-95, 530-32, 552-54).

By his admission, Respondent Musallam called The Minor’s mother for an improper purpose. His desire to obtain information about his upcoming Internal Affairs interview is not an excuse for violating this unambiguous norm. He is, and was, a Member of Service who is supposed to be an authority figure in our culture. While he may wish to have the Tribunal view this conversation as innocuous, the risk that The Minor’s mother would have interpreted his call as a veiled threat is manifest. Contrary to his portrayal of the conversation as a mere request for information, he told The Minor’s mother that he had a family and did not want any trouble. The clear implication of that language is that he was in jeopardy personally and professionally and wanted to impress that upon her. The only logical reason to make such a statement is to caution a witness against saying anything that could put him into further jeopardy.

Moreover, by the time Respondent Musallam made this telephone call, he had received any number of text messages from The Minor that he should have known would be problematic on a professional level should they become known to this Department. He had retained a sexually explicit photograph of The Minor that he had in his possession when he made the telephone call to her mother. There should have been no surprise to him that Internal Affairs would seek to interview him based upon the receipt of that photograph without regard to any other allegation of misconduct The Minor or her mother may have made against him. I find it more likely than not that Respondent Musallam made the call to The Minor’s mother to find out

how much incriminating information had been provided to Internal Affairs before he appeared for the interview, further evincing consciousness of guilt.

Based upon the foregoing, I find Respondent Musallam Guilty of Specification 3.

Specification 6: Sexual Contact without Consent

Specification 4: Sexual Contact with an Underage Explorer

Specification 5: Intercourse with a Person Under the Age of 17

Specification 7: Endangering the Welfare of a Minor

I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent Musallam subjected a person to sexual contact without consent.

The findings of fact and analyses relating to Specifications 1, 2, and 3 are repeated and incorporated by reference.

In a series of in-person and telephonic interviews, The Minor revealed a sexual relationship she had with Respondent Musallam. I find that The Minor first denied, then minimized the details of the relationship, then revealed much more, before she detailed a graphic encounter that took place in his car. Finally, The Minor revealed that she and Respondent Musallam had sexual intercourse in his car.

Respondent Musallam recalled a specific incident where The Minor texted that she was considering suicide and needed him to come to talk to her. On previous occasions, he had refused her requests that he come to her home. On this occasion, Respondent Musallam was off-duty and agreed to do so, recalling that The Minor and her mother were outside waiting when he arrived around 2330 hours. He testified that The Minor got in his personal vehicle's front seat - a

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gray Altima - and the mother remained nearby on the stoop about ten feet away. The windows on his car were not tinted (T. 479-83).

Respondent Musallam claimed that when he asked The Minor about her situation, she made only small talk in response, and it “just occurred” to him that she was “just looking for attention.” He told The Minor, “You obviously lied to get me here,” and that he needed to go. Respondent Musallam claimed The Minor was in his vehicle for no more than five minutes before she exited, and he drove home. He made no notifications to his chain of command about this incident, asserting he did not feel the need to advise anyone in the Department (T. 483-85, 498, 538-39).

The Minor stated that while they were inside his car, Respondent Musallam asked her to perform oral sex upon him, which she refused to do. He then asked her if she would “give him a handjob.” The Minor then masturbated Respondent Musallam’s penis.

Respondent Musallam emphatically denied having any sexual contact with The Minor at this time or on any other occasion; he further denied ever being alone with her or having any physical contact, such as a hug or kiss on the cheek at any time. Respondent Musallam testified that both The Minor and her mother continued to contact him after this incident (T. 485-86, 538-39).

I find further that these disclosures’ pattern and timing, when considered amidst the revelations’ surrounding circumstances, nevertheless permit a finding that they were credible, even if they were not the product of a single, fulsome statement. The Minor confessed to liking Respondent Musallam and trying to prevent him from getting into trouble, but she eventually revealed details of the relationship she had hidden from her mother. Even after making these

revelations, The Minor insisted that she was reluctant to testify about Respondent Musallam's misconduct. The Minor most poignantly asserted that she did not reveal the true nature of her relationship with Respondent Musallam "*because [she] don't trust cops*" [emphasis added] (Dept. Ex. 11 at 15).

I credit The Minor's statements because they were logical and corroborated in no small degree by Respondent Musallam's admissions. As discussed above, Respondent Musallam's denials are unworthy of belief, particularly when considered with the evidence of his consciousness of guilt.

Based upon the foregoing, I find Respondent Musallam Guilty of Specification 6.

I further find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent Musallam wrongfully engaged in sexual contact on one occasion with an underage participant of the Explorer program.

I find further that the nature of Respondent Musallam's misconduct was contrary to the good order, discipline, and efficiency of this Department. The Explorer program is an essential element of this Department's Community Policing strategy. It permits Members of Service to engage with young people positively in a proactive manner in projects that serve the community. It can also provide a structured activity for young people whose personal lives lack safe, enriching experiences. The program is designed to involve students at high school age, which means that they are most likely to be minors under 17.

It is essential for the success of a program where young people work with police officers that those police officers are trusted to act in the minors' best interests at all times. A police officer who enters into a sexualized relationship with a member of the Explorer program, whether legally capable of consent to such a relationship, does great violence to the trust the

leadership of this Department and the citizens of this city, repose in them. When that Explorer is underage, the damage to public trust is incalculable to the Explorers or any minors in the community they serve.

I, therefore, find Respondent Musallam Guilty of Specification 4.

I further find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent Musallam, being 21 or more, engaged in sexual intercourse with a person under 17.

As outlined in her June 7, 2018, statement, The Minor alleged that Respondent Musallam had sexual intercourse with her in his car. The Minor told him that she did not want to have sex, but Musallam persisted until The Minor acquiesced. The Minor was approximately 15 years old at the time of this incident; in any event, she was under the age of 17 and legally incapable of consenting to the act of sexual intercourse (Penal Law § 130.05[3][a]). As set forth above, I do not believe Respondent Musallam's denials and consider his consciousness of guilt a factor weighing heavily against his veracity.

Based upon the foregoing, I find Respondent Musallam Guilty of Specification 5.

I further find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent Shohatee acted in a manner likely to endanger the physical, mental or moral welfare of a child less than 17 or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to life or health.

I find that the pattern of conduct Respondent Musallam engaged in with The Minor: engaging in sexually explicit conversations, encouraging her to send him sexually explicit photographs, and engage in progressively intimate sexual activity culminating in sexual intercourse on one occasion, is of character that it would likely endanger the physical, mental or

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moral welfare of any person less than 17 years old. In this case, Respondent Musallam was asked by The Minor's mother to help her guide her child while going through a difficult period of her life. Instead, Musallam abused that trust by taking advantage of a vulnerable individual's immature impulses, all while portraying himself as a noble actor, as far as The Minor's mother was aware. The potential psychological damage brought about by his misconduct defies precise calculation.

Based upon the foregoing, I find Respondent Musallam Guilty of Specification 7.

PENALTY

In order to determine an appropriate penalty, Respondents' service records were examined (*see Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 240 [1974]). Respondent Shohatee was appointed to the Department on January 10, 2005, and Respondent Musallam was appointed to the Department on July 21, 2008. Information from their personnel records considered in making these penalty recommendations is contained in the attached confidential memoranda.

Respondent Shohatee has been found guilty of initiating and maintaining some correspondence with a minor over social media, text messaging, and telephone calls. Based upon the discussions he admitted to having with this minor, he should have known that she was a troubled individual he was ill equipped to assist if he ever had that motivation. Instead, the evidence established that he took advantage of The Minor's vulnerability by admitting her into his apartment, where he committed statutory rape, by engaging in sexual intercourse with her, an act that she was legally incapable of consenting to.

Respondent Musallam started some correspondence with The Minor at the instigation of her mother; assuming that he initially did so motivated by a desire to help The Minor, he

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abandoned that purpose when he continued and cultivated a flirtatious relationship, which grew increasingly sexual. He was aware that The Minor was attracted to him, but instead of immediately stopping the communication, he continued it and exploited it for his own purposes. The evidence established that he, too, was well aware that The Minor needed support, which he was not equipped to provide; he did not express his concerns to her mother, however, with whom he professed to have a good relationship. Respondent Musallam engaged in a ruse with The Minor, which camouflaged an assignation in his parked vehicle. During this clandestine meeting, he directed The Minor to masturbate his penis. He requested that The Minor perform oral sex upon him, but she refused. Respondent Musallam also engaged in sexual intercourse with The Minor in his car, an act that she was legally incapable of consenting to (Dept. Ex. 8 at 14-17; Dept. Ex. 11 at 13-15). In a calculated strategy to undermine The Minor's credibility if she ever were to reveal their relationship's illicit nature, he retained an explicit photograph of her in her underwear.

In a brazen act revealing his consciousness of guilt, he called The Minor's mother after a year without contact once he was informed that Internal Affairs investigators would interview him.

Both Respondents have been found guilty of shocking professional and sexual misconduct. They abused the trust reposed in them by this Department and violated their oaths of office. It bears stating in explicit terms that The Minor was victimized by two uniformed Members of Service assigned to the same precinct. The evidence supports a finding that Respondents individually targeted The Minor as a particularly vulnerable individual they were morally obliged to protect but chose to take advantage of to satisfy their depraved interests. A severe sanction is required to maintain good order and discipline in this force.

POLICE OFFICER YASER SHOHATEE
POLICE OFFICER SANAD MUSALLAM

Respondents' misconduct was such a gross deviation from the standards of conduct expected from Members of Service that their continued employment by this Department can only operate to erode the already fragile relationship between Members of Service and the citizens they serve. Their continued presence in this Department is an affront to the Members of Service who have served honorably and with fidelity to their oaths, even to the point of death. Had I acquitted both Respondents of the sexual misconduct charges, I would nevertheless recommend termination, as the lack of judgment evinced by their flagrant disregard of Department policy would make it impossible for them to continue to be sworn police officers.

Accordingly, I recommend that Respondent Shohatee and Respondent Musallam be DISMISSED from This Department.

Respectfully submitted,

Paul Gamble
Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

DERMOT SHEA
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER YASER SHOHATEE
TAX REGISTRY NO. 937533
DISCIPLINARY CASE NO. 2017-17989

Respondent was appointed to the Department on January 10, 2005. On his last three annual performance evaluations, he received 4.5 overall ratings of “Extremely Competent/Highly Competent” for 2014, 2015, and 2016. He has been awarded one medal for Excellent Police Duty. [REDACTED]

Respondent has no disciplinary record. In connection with the instant matter, Respondent was placed on Level I Discipline Monitoring on May 10, 2018 and on modified assignment on June 21, 2018. Respondent’s monitoring and modified status remain ongoing.

For your consideration.

Paul Gamble
Paul M. Gamble
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER SANAD MUSALLAM
TAX REGISTRY NO. 947817
DISCIPLINARY CASE NO. 2017-18368

Respondent was appointed to the Department on July 21, 2008. On his last three annual performance evaluations, he twice received 4.0 overall ratings of “Highly Competent” for 2014 and 2016, and once received a 3.5 rating of “Highly Competent/Competent” for 2015. He has been awarded two medals for Excellent Police Duty. [REDACTED]

Respondent has no disciplinary record. In connection with the instant matter, Respondent was placed on modified assignment on June 21, 2018 and on Level II Discipline Monitoring on August 15, 2018. Respondent’s monitoring and modified status remain ongoing.

For your consideration.

Paul Gamble
Paul M. Gamble
Assistant Deputy Commissioner Trials